SINGAPORE REPORTS

SIM ANN SIONG v. THE ATTORNEY-GENERAL

[C.A. (Wee Chong Jin C.J., Chua and Winslow JJ.) June 3, 1975]

[Singapore — Civil Appeal No. 43 of 1974]

Factories — Prison workshop — Whether a factory — Factories Act (Cap. 123) ss. 6(1), (4), (9) and 22(1).

Prison — Prison workshop — Injury sustained by prisoner whilst operating a machine at prison workshop — Claim for damages — Whether prison workshop was a factory.

The appellant, a prisoner, was put to work in a prison workshop, and whilst operating a machine driven by electrical power, his left hand was caught in the nip of the rollers of the machine which were not provided with any guard. The appellant's index, middle and little fingers were severely crushed and later the middle and index fingers were amputated.

The appellant alleged, *inter alia*, that the accident took place in a factory within the meaning of the Factories Act (Cap. 123) and was caused by the breach of statutory duty by the Government in that the rollers of the machine were not securely fenced as required by section 22(1) of the Act.

The appellant's claim against the respondent for damages for the aforesaid personal injuries was dismissed by the High Court. The sole question for determination in this appeal was whether the prison workshop was a factory within the meaning of the Act.

Held, dismissing the appeal: the prison workshop was not a "factory" within the meaning of section 6(1) of the Factories Act.

Cases referred to:-

(1) *Wood* v. *London County Council* [1940] K.B. 642, C.A. [1941] 2 K.B. 232.

(2) *Weston* v. *London County Council* [1941] 1 All E.R. 555.

(3) *Pullen* v. *Prison Commissioners* [1957] 3 All E.R. 470.

COURT OF APPEAL.

H. E. Cashin and *T. G. Dunbar* for the appellant.

Rajan Menon (State Counsel) for the respondent.

Chua J. (delivering the judgment of the Court): This appeal arises from a claim of the appellant against the respondent for damages for personal injuries sustained by the appellant on August 27, 1970, when he was operating a machine while a prisoner at the Changi Prison, Singapore. The appellant's claim was dismissed with costs by the High Court.

On August 27, 1970, the appellant was a prisoner in the Medium Security Prison at Changi and, as required by section 50 of the Prisons Act (Cap. 79), he was put to work in the prison workshop operating a machine driven by electrical power for the making of dustbins. The machine comprised, *inter alia*, a pair of horizontal rollers, to the running in point of which the appellant had to feed metal sheets by hand. The rollers were not provided with any guard or other device to prevent the operator's hand from being caught in the nip of the rollers. While the appellant was operating the machine his left hand was caught in the nip of the rollers and his index, middle and little fingers were severely crushed and later the middle and index fingers were amputated.

The appellant alleged, *inter alia*, that the accident took place in a factory within the meaning of the Factories Act (Cap. 123) (hereinafter referred to as "the Act") and was caused by the breach of statutory duty by the Government in that the rollers of the machine, a dangerous part of the machine, were not securely fenced as required by section 22(1) of the Act.

The sole question for determination in this appeal was whether the prison workshop was a factory within the meaning of the Act.

Section 6(1) of the Act gives the general definition of the word "factory". The material words of the section are these:

"(1) Subject to the provisions of this section the expression 'factory' means any premises in which ... persons are employed in manual labour in any process for or incidental to any of the following purposes, namely (a) the making of any article or part of any article ... being premises in which ... the work is carried on by way of trade or for purposes of gain...."

Section 6(2) goes on to say that there are premises which may not fall within the general definition of a factory in section 6(1) but which, nevertheless, are factories and a list of seventeen special cases is set out. If Parliament had intended that a prison should be included it would have been mentioned in this sub-section.

It was submitted by counsel for the appellant that it was unnecessary by section 6(4) that there must exist the relationship of master and servant and that it was unnecessary by section 6(9) that the work should be carried on by way of trade or for purposes of gain where the premises belong to the Government. We were of the view that there was no substance in that submission.

Section 6(4) provides:

"any workplace in which, with the permission of or under agreement with the owner or occupier, ten or more persons carry on any work which would constitute the workplace a factory if the persons working therein were in the employment of the owner or occupier of the workplace, shall be deemed to be a factory for the purposes of this Act, and, in the case of any such workplace, the provisions of this Act shall apply as if the owner or occupier of the workplace were the occupier of the factory and the persons working therein were persons employed in the factory."

Section 6(9) provides:

"any premises belonging to or in the occupation of the Government ... or any local authority or other public authority shall not be deemed not to be a factory ... by reason only that the work carried on thereat is not carried on by way of trade or for purposes of gain."

The provisions of sections 6(1), 6(4) and 6(9) are identical with those of sections 151(1), 151(4) and 151(9) respectively of the English Factories Act, 1937.

In *Wood* v. *London County Council*[1] the plaintiff, a kitchen-maid employed by the defendants, a public authority, was mincing meat with an electrically-operated mincing machine in the kitchen of a hospital belonging to the defendants, the minced meat being intended for consumption on the premises by the patients at and/or the staff of the hospital, when her hand was caught in the machine and she was injured. Tucker J. held that the effect of section 151(9) of the Factories Act, 1937, was that whereas, in a normal

case by section 151(1) for premises to be a "factory" within the meaning of the Act, it was essential that the work carried on thereat should be carried on by way of trade or for purposes of gain, that was not so when the premises belonged to or were in the occupation of a public authority. The Court of Appeal ([1941] 2 K.B. 232) reversed the decision of Tucker J. on this point and held that the kitchen was not a factory within section 151(1) and section 151(9) of the Act and therefore the defendants were under no obligation under section 14 to fence securely any dangerous machines thereon. MacKinnon L.J. said that the definition must be construed in the light of common sense and that the kitchen of a large mental hospital is not within it since many of the provisions of the Act could not apply to it.

In *Weston* v. *London County Council*[2] the plaintiff, a pupil at a technical institute of the defendants was injured while working a wood-cutting machine at the institute. The plaintiff alleged that the institute was a "factory" within the Factories Act, 1937, and that the accident was due to the defendant's negligence and/or breach of their statutory duties under the Act. It was held that the institute was not within the general definition of a factory in section 151(1) of the Act nor has section 151(9) the effect of bringing such an institution within the definition of a factory. Wrottesley J. in his judgment said (at page 559):

"Thus, it is said that, since they are a public authority, and are the owners of these premises, one can re-read the general definition and strike out the words 'premises in which' the work is 'carried on by way of trade or for purposes of gain.' The object and intent of that subsection is to cover all those activities, whether by servants of the Crown or by public or local authorities, which would not be covered by the Act — namely, great employers of labour, such as the Crown, on the one hand, and local authorities, on the other hand, all kinds of factories and other premises which appear in the special list, and all those factories and other premises which, because their product is not trade or articles sold or made for the purpose of gain, would, but for some such subsection, fail to fall within the control imposed by the Factories Act, 1937. This proviso, it is to be observed, is of a fairly lengthy kind. It does not say that premises belonging to, or in the occupation of, a public body shall be factories if they comply with the other particulars in the definition. It says that they are not to be deemed not to be a factory because the work carried on in them is not carried on by way of trade or for the purpose of gain."

The question whether a prison workshop is a factory within the meaning of the Factories Act, 1937, fell to be decided in the case of *Pullen* v. *Prison Commissioners*.[3] The plaintiff, while serving a sentence of imprisonment was put to work in the manufacture of coir mats in the prison workshop. Four months after his release he was found to be suffering from tuberculosis. He brought an action alleging breach of statutory duty. He based his claim on the allegation that the prison workshop was a factory within the meaning of section 151(1) of the Factories Act, 1937, and alleged that the Prison Commissioners, in breach of section 47, had failed to take measures to protect him from dust and fumes. It was held that the prison workshop was not a factory within the meaning of the Factories Act, 1937, there being no relationship of master and servant or employment for wages in the case of a prison.

In his judgment Lord Goddard C.J. said (at page 471):

"I am satisfied that on a true construction of the Act I ought not to hold that a prison workshop is a factory. I will content myself with referring to *Weston* v. *London County Council* ((1941) 1 All E.R. 555) in which Wrottesley J., held that a technical institute was not a factory and gave reasons which seem to me to be even more compelling in the case of a prison than they were in the case of a technical institute. The Factories Act, 1937, is an Act which is designed for the protection of persons working in factories, that is to say, it is an Act which is intended to and does put obligations on employers of labour in factories and other places to take various precautions for the protection of their work-people. It applies, as the Solicitor-General submitted, to people working under contract and not to prisoners employed on labour as part of penal discipline.

Section 151 of the Factories Act gives an interpretation of the word 'factory' which I need not read. The definition includes premises in which persons are employed for the making of any article, and then section 151 goes on to say:

'And (whether or not they are factories by reason of the foregoing definition) the expression 'factory' also includes the following premises in which persons are employed in manual labour, that is to say',

and then there is mention of premises such as ships, dry docks, yards and various premises in which certain businesses are carried on, e.g., laundries, which all appear to be factories. If Parliament had intended that a prison should be included, it would be a very remarkable thing if, when they were considering the latter provisions of this subsection, they should not have included any reference to prisons. If the definition of 'factory' is to apply, there must exist (except in certain express cases, for instance, apprentices, for there is a subsection which deals with apprentices) the relationship of master and servant and employment for wages. There is no employment for wages in the case of prisoners. Prisons are under the control of the Secretary of State, who exercises his control through the Prison Commissioners, and there are also visiting magistrates who visit to see that the provisions of the Prison Act, 1952, are being carried out.

There are several provisions of the Factories Act, 1937, to which my attention was called which seem to show quite clearly that they cannot possibly apply to prisons. The work which is carried on in prisons is work which is penal in the sense that the prisoners are obliged to work as a consequence of their sentence. I do not find any section in this Act which faintly indicates in my opinion that a prison workshop can be a factory. The reasons given by Wrottesley J., in *Weston* v. *London County Council* appeal to me and I could not put them better if I were to take much longer in giving this judgment than I am already doing. I think the consideration which he applied to showing that a technical institute was not a factory although work was being carried on there which, if it had been carried on by persons employed under a contractual relationship, would have made the place a factory, apply in this case; and, if in the case before Wrottesley J., the institute was not a factory, still less is a prison a factory."

We respectfully agree with the view expressed by Lord Goddard.

In our judgment a prison workshop is not a "factory" within the meaning of section 6(1) of the Act and we therefore dismissed the appeal at the end of the hearing.

Appeal dismissed.

Solicitors: *Murphy & Dunbar.*